SUPREME COURT, U. S.

FILED

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Supreme Court of the United States

OCTOBER TERM, 1967.

No. 957

JESSIE M. YATES,

Petitioner,

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND/OR RULING ON PETITIONER'S RIGHTS SET FORTH IN THE UNITED STATES CONSTITUTION.

JESSIE M. YATES,
128 N. Genois Street,
New Orleans, Louisiana,
Acting as own Counsel.

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To the Justices of the Supreme Court of the United States:

The petitioner herein prays that a writ of certiorari issue to review the final judgment of the United States Court of Appeals for the Fifth Circuit, which was entered on June 7, 1967; and which affirmed the judgment of the United States District Court for

the Eastern District of Louisiana, New Orleans Division, which was entered on November 17, 1965.

Petitioner herein prays also for a Ruling on her rights set forth in the United States Constitution, which have been denied her by the Courts above mentioned, as hereinafter set forth.

Opinion Below.

The opinion of the United States Court of Appeals for the Fifth Circuit is in the record before this Court; as is the opinion of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Statement of Case.

Circuit Judges Thornberry and Coleman and District Judge Young state, in their opinion dated June 7, 1967, as follows:

> "Appellant sought both in the administrative actions and in the judicial proceedings to challenge the necessity of her taking a medical examination. But that was not the issue upon which she was discharged; her insubordination stemmed from her refusal to submit to the examination and not from the reasons the agency may have had for seeking such an examination.
>
> "The court below correctly concluded there were no genuine issues of material facts and that

the uncontroverted record established that in discharging appellant her superiors had substantially complied with the applicable statutes and regulations.

"* * *Furthermore, the decision below rested solely on legal conclusions which have been fully reviewed by this Court and found correct."

* * * * *

"In my opinion, from an examination of the record, serious doubt is cast on this issue and if, in fact, she was not responsible then it would be as much an injustice to deprive her of her pension and other rights earned by her during years of satisfactory and creditable service as it would be to punish a defendant for a crime committed under circumstances that would make him legally not responsible for such an offense."

Petitioner is a citizen of the United States of America, born in New Orleans, Louisiana. She was employed by the United States Government for thirty-one (31) years of consecutive service she has never been arrested in her life, even for a misdemeanor. What Circuit Judges Thornberry and Coleman say above is all very well, so long as fraud is not involved. But fraud is involved in this case. As for the "uncontroverted record," this "evidence" is inadmissible. District Judge Young hints very strongly that petitioner has committed a crime. Petitioner has committed no crime, other than the "crime" of fighting for her rights.

Petitioner looked at her record in 1962, prior to her dismissal, in the Personnel Office of the Transportation Terminal Command, Gulf, and she saw not one derogatory document in it. The record comprised her 31 years of service in the Government. So what "uncontroverted record" are the Judges talking about? When did all the "criminal activity" take place? Was it during petitioner's 31 years of continuous service in the Federal Government? If so, why was she not informed of her "crimes" by Government officials? It seems that someone has been derelict in his duty.

At the hearing on October 25, 1966, petitioner told Circuit Judges Thornberry and Coleman, and District Judge Young, the following:

> "Appellant was screened when she entered Government Service in 1931, and again in 1958 when she entered the employ of the OSA, and she passed the screening. She completed 31 years of uninterrupted service.
>
> "Col. Miller used false affidavits against appellant, in his possession, as the basis for ordering her to take a medical examination. The order was simply a ruse, a phony, a 'cover,' for fraud. Therefore, since the affidavits were false, the order was invalid; hence, there was, and could be, no insubordination. To obey such an order would be tantamount to cooperating with fraud and conspiracy.
>
> "Thus, having failed to force appellant to take the medical examination, the conspirators (Ma-

nale and Sonnemann) tried another tactic they forced Dr. C. J. Gulotta to make a false report on appellant, in an effort to give credence to the false affidavits above-mentioned. The plan of the conspirators was not only to deprive appellant of all her rights, but to try to deceive the Court into believing the false affidavits were *bona fide*.

"Appellees are in default, having failed to answer appellant's original complaint.

"No witnesses were allowed appellant by the District Court, although she made a specific request to the Court for certain witnesses; her request was denied. All motions to see the evidence were also denied. Appellant has seen no evidence.

"Judge Christenberry should have recused himself because he has an interest in this case, namely, a family relationship to two conspirators in this case. The Judge is related, by marriage, to Henry Vosbein and Roy L. Schmidt (R. 20), who are deeply involved in this case. The Judge admitted this family relationship at the hearing in May 1965 and when appellant asked him why he did not recuse himself, he answered: 'Not in this case.' This case should be adjudicated according to law, as is every other case. It was impossible to receive a fair hearing from Judge Christenberry, under the circumstances, or to expect him to make an impartial decision,

or to expect him to write an impartial opinion. He simply did not want to be embarrassed. But justice is more important than anyone's embarrassment."

Petitioner told Judge Christenberry in Court on August 2, 1967, the following:

"I am here to raise the issue of my competency on the date of my refusal to submit to the medical examination.

"I was competent on that date; responsible for my actions; and capable of distinguishing between right and wrong, as I am now.

"My former physician, Dr. Carl Gulotta, submitted a false report against me under pressure, blackmail and terror of my opponents, Manale and Sonnemann.

"I request a trial in order that justice may be done and that the conspirators, Manale and Sonnemann, may be convicted of the fraud and murder which they have committed."

Petitioner had no intention on November 23, 1962, and has no intention now, of taking a "rigged" medical examination, so that the conspirators, Bernard J. Manale, and Lt. Col. Eugene H. Sonnemann, and the others involved, can escape punishment for fraud, and the other crimes they have committed. How does petitioner know the medical examination would be "rigged?" See Dr. Gulotta's false report, and the

"uncontroverted record," in the record before the Court. If the Court was willing to accept the "uncontroverted record" as a fact, then it would have accepted the "rigged" medical examination as a fact, also.

Petitioner wants a trial, whether fair or unfair; if she cannot obtain a fair trial, she will take an unfair trial, because the truth always comes out in the end.

On February 1, 1965, petitioner had a hearing before Circuit Judges Jones and Brown, and District Judge Sheehy. At the hearing, Circuit Judge Jones said to petitioner:

> "I cannot consider 'your fraud' because you have not joined the indispensable parties."

On February 12, 1965, the Judges above named rendered their opinion, giving petitioner the right to apply to the district court for leave to amend her complaint by joining as parties defendant the several Commissioners of the United States Civil Service Commission. This was a quick and very welcome decision. But after petitioner joined the indispensable parties, the Court still did not consider her "fraud," as will be seen in the record before this Court.

Why did Circuit Judges Thornberry and Coleman and District Judge Young say in their opinion of June 7, 1967 that "there were no genuine issues of material facts?" The record before the Court showed evidence of fraud and fraud is a genuine issue of ma-

terial fact. For one thing, Circuit Judge Thornberry was threatened by Manale and Sonnemann, the conspirators, above mentioned. On one of the frequent visits into the Judges' Chambers of Col. Robert B. Miller and the said Col. Sonnemann, they both orally admitted the fraud, which was all too obvious. But when Judge Thornberry could not see it their way, Manale and Sonnemann threatened him.

Petitioner submitted to the U.S.C.A. (5th), six affidavits, in her favor, made by her family and neighbors, which are diametrically opposed to the ones submitted to the Court as "evidence" by respondents. Blackmail was used by Manale and Sonnemann to obtain the affidavits against petitioner. The affidavits submitted by petitioner are as follows: Mrs. Edward L. Schmidt dated July 14, 1964; Mrs. F. J. Dupree dated August 5, 1964; Mrs. F. Franz August 12, 1964; Mrs. John T. Payton, Jr. dated August 18, 1964; Mrs. Fanny Dotson September 1, 1964; Miss Mary Sue Wetta dated September 8, 1964. Petitioner also advised the Court of a report dated Sep. 11, 1963 by John B. Holland, M.D., Ochsner Clinic, New Orleans, submitted to the President of the United States. Dr. Gulotta's report of July 25, 1963, was submitted to the Court on September 14, 1964; and six letters of recommendation obtained from petitioner's employers, subsequent to her dismissal. All of the above will be found in the record before this Court.

While petitioner was awaiting the decision of the U.S.C.A. (5th), which ultimately came on June 7, 1967, she was constantly being harassed by the con-

spirators Manale and Sonnemann. She reported this fact to Mr. G. F. Ganucheau, Chief Deputy Clerk, U.S.C.A. (5th), who told her to write a letter to the Clerk of Court, relative to the harassment, and he would see that the Court received the letter. The letters relative to the harassment are as follows: February 21, 1967; April 7, 1967; April 24, 1967; and May 14, 1967; also letter dated July 10, 1967. Petitioner submitted exhibits with these letters, showing vandalism perpetrated on her residence by the conspirators, Manale and Sonnemann. Petitioner reported the vandalism to the police, but was later informed by Capt. L. B. Cochrane of the Police Department that no police report had ever been made. She reported the vandalism and other crimes, to the Superintendent of Police, Mr. Giarrusso, but never received a reply. The letter to Mr. Giarrusso is Exhibit A to petitioner's letter of May 14, 1967, above mentioned. Petitioner is insured against vandalism and malicious mischief, but the insurance company, Kessler-Bodenheimer Insurance Agency, Inc., would not honor her claim, on pressure from Manale and Sonnemann. Can a citizen do more than report these matters to the police and to the Court? Petitioner had the lock on her front door changed, as will be seen by her letter to the Clerk of Court dated April 24, 1967, above mentioned, but the conspirators, Manale and Sonnemann, still have access to petitioner's home and come in anyway; and continue to destroy petitioner's property. Two attempts were made on petitioner's life, see letters to Clerk of Court dated April 7, and May 14, 1967, above mentioned.

Manale and Sonnemann are responsible for having petitioner's mother "brain-washed" at Touro Infirmary, New Orleans, sometime during the period December 16, 1966 and January 6, 1967. The purpose of the brain-washing was to force petitioner's mother to make a will, which was completely contrary to petitioner's interests. The said will is illegal in every sense of the word. See letter of May 14, 1967, to Clerk of Court (U.S.C.A. 5th), relative to a will dated October 24, 1951, made by petitioner's mother, Mrs. Blanche Yates.

Manale and Sonnemann are responsible for the following thefts of money from petitioner: They forced petitioner's sister, Mrs. Audrey Wetta, to steal $60 from her in October 1967. This was a week's pay. Petitioner was taking dictation in an office where she was working temporarily, and when she returned to her desk, she noticed that her purse had been moved. On making a count, she found that $60 was missing. Earlier, in the summer of 1967, when Mrs. Wetta filed her motion for leave to intervene on "behalf" of petitioner, Manale and Sonnemann forced the said Mrs. Wetta to go to petitioner's home and steal a sum of money from her, in order to pay her lawyer for filing said motion; the amount of money Mrs. Wetta was forced to steal was more than $60. The other thefts of money from petitioner occurred in 1947 and 1948, when she was working for the Internal Revenue Service in New Orleans. They were: $9 which petitioner's father was forced to steal from her

purse in the office of the Internal Revenue Service. Petitioner typed a memo to the office relative to the missing $9; and $12 was stolen in 1948 from petitioner by her nieces, which they were forced to do. The one responsible for these two thefts was Mr. William E. Logan, then Internal Revenue Agent in Charge, Internal Revenue Service, New Orleans. See page 15 of this petition, where Mr. Logan's name appears as one of the attorneys who tried to assist petitioner in securing the evidence.

Petitioner's family was forced to cooperate with the conspirators, Manale and Sonnemann, or face death. They are: Mrs. Audrey Yates Wetta, Mrs. John T. Payton, Miss Mary Sue Wetta, Mrs. Fanny Dotson; and Mrs. Payton's husband, John T. Payton, was forced to cooperate. These people were threatened continuously, as was petitioner's mother, Mrs. Blanche Yates.

Petitioner made a sworn statement to the Inspector General in 1962, prior to her dismissal; but this was the last she saw of it; that is, when the affidavit was typed, it was never given to her to sign before it was sent to Washington with the other affidavits made in the Inspector General's investigation. In other words, petitioner's sworn statement was "rigged" by Manale and Sonnemann before it was sent to Washington, and her signature forged. Of what good is an affidavit if affiant's signature is not affixed thereto? Mr. Kleo E. Blue, Jr. also made an

affidavit, in favor of petitioner, to the Inspector General, on February 19, 1962. See letter from Lt. Col. Karl E. Wolf, JAGC, Command Judge Advocate, Washington, D. C., which petitioner made an enclosure to her Memorandum to the U.S.C.A. (5th), on September 14, 1964. Col. Wolf's letter is dated November 5, 1962. The Army refused to release said affidavit, even when petitioner took Mr. Manale to Civil District Court in 1962 for slander. The said Mr. Blue has been threatened many times by Manale and Sonnemann, as a result of this cause.

In Mr. Gemeinhardt's Memorandum to the United States Court of Appeals for the Fifth Circuit, copy of which was sent petitioner on May 4, 1964, it is stated on p. 2:

> "The purpose of this continuance was to grant appellant sufficient time within which to obtain counsel and to prepare a defense to the Government's Motion to Dismiss."

Petitioner was deprived of counsel in this cause, by the conspirators Manale and Sonnemann. The only attorney she was able to secure was Mr. David E. Hogan in 1962 for the slander suit, and he was bribed by Manale and Sonnemann, with Army funds. Following is a list of attorneys petitioner contacted in an endeavor to obtain counsel in this cause. Two of them tried to get evidence for her, but they dropped the case quickly when they were unable to do so. They all gave their time without charge, but none would

take the case and hold it. As a consequence, whenever petitioner went to Court, whether to the District Court or to the U.S.C.A. (5th), she had to argue her own case, prepare her own briefs, prepare her own motions, memoranda, letters, etc., and prepare this Petition. Since petitioner is not an attorney, this work was extremely onerous.

Year	Attorney	Reason
1962	Mr. Sidney Roos National Bank of Commerce Bldg. New Orleans, La.	"I wouldn't take *that* case." He recommended the F.B.I.
1962	Mr. Leon Sarpy National Bank of Commerce Bldg. New Orleans, La.	He recommended the District Attorney.
1962	The District Attorney, Mr. Jim Garrison, New Orleans, La. (Petitioner went to his office with a written statement)	His office: "We don't 'handle' cases like that."
1963	The F.B.I. New Orleans, La.	"The only way you will be able to see the evidence is to get a Court order."
1963	Mr. Chalin O. Perez Commerce Bldg. New Orleans, La.	He said he takes only "Civil" cases.

1963	Mr. William E. Logan Gulfport, Miss.	He dropped the case when he was unable to secure the evidence from Congressman Morrison.[1] Petitioner contacted Mr. Logan again on December 19, 1963, and asked him to represent her at the hearing on January 15, 1964. No answer.
1963	Mr. Melvin J. Duran 201 First Homestead Bldg. New Orleans, La.	He tried to talk petitioner out of going to Court.
1963	Mr. Benjamin E. Smith Baronne Bldg. New Orleans, La.	He dropped the case when he was unable to get a satisfactory reply from Mr. C. B. Harrison, Personnel Officer, U. S. Army Terminal Command, Gulf.
1964	Mr. David C. Treen California Company Bldg. New Orleans, La.	His firm was too busy to help petitioner.

[1] Appendix "C" is a letter from Mr. Logan dated June 17, 1963, which was his last effort in the case.

Year	Attorney	Reason
1964	Mr. Girard J. Fernandez Carondelet Bldg. New Orleans, La.	"I am unable to be of any service to you in this matter." (See ~~Appendix~~ Exhibit "A")
1964	President, American Bar Association, 1155 East 60th St., Chicago, Ill.	He advised petitioner to see an attorney in the Legal Aid Bureau.
1964	Legal Aid Bureau International Bldg. New Orleans, La.	The attorney advised petitioner that he could not help her. . .but that a brief was only a statement of her case; and to do the best she could.

Petitioner believes this list will suffice to show her inability to obtain counsel.

On June 25, 1964, Circuit Judges Rives, Wisdom, and Gewin denied petitioner's supplement to motion and amended motion to view the evidence "because it appears from the record that no evidence was introduced in the district court." However, Judge Christenberry came into possession of the "evidence" when he made his decision on November 17, 1965. See p. 4 of the Judge's opinion where he speaks of the "uncontroverted record."

Errors in The United States District Court, Eastern District of Louisiana, New Orleans Division.

1. Judge Christenberry erred in failing to order respondents to answer petitioner's complaint. (R. 1-13.)

2. Judge Christenberry erred in failing to order judgment by default against respondents for the relief demanded in the complaint, for their failure to answer said complaint. (R. 21, 26-31.)

3. Judge Christenberry erred in granting motion to dismiss, because petitioner had failed to join indispensable parties. He allowed the United States Attorney's Office to take advantage of this technicality in a serious matter, when he knew petitioner had no one to

defend her, and that she was acting as her own counsel.

4. Judge Christenberry erred in October 1963, after petitioner filed her complaint; she asked to see the Judge in his Chambers; he consented, but tried to talk her out of getting her rights. Petitioner only asked to see him in his Chambers because Col. Miller and Col. Sonnemann were going into the Judge's Chambers continuously, their sole purpose being to prejudice petitioner's rights in this cause.

5. Judge Christenberry erred in failing to recuse himself. The Judge's interest in the case is that he is married to Henry Vosbein's sister, and Henry Vosbein is deeply involved in this cause, as already stated. Henry Vosbein is married to a Wetta; Roy L. Schmidt (R. 20) is married to a Wetta; petitioner's sister, Mrs. Audrey Yates Wetta, was married to a Wetta, now deceased. Whether Judge Christenberry ever sees these people or not is not important; the "interest" is there and the Judge did not want to be embarrassed. He put his own personal feelings before justice to petitioner.

6. The District Court erred in not allowing petitioner to have a witness at the hearing on December 18, 1963 (R. 35-36). (No answer

was received to her request); and hearing was continued to January 15, 1964. (R. 37.) Prior to the hearing on January 15, 1964, petitioner went to see Mr. Jones, in the Clerk's Office, and asked him if she could subpoena the following for the hearing on that date:

1. Mr. Kleo E. Blue, Jr.
   5911 Painters St.
   New Orleans, La.

2. Mrs. Edw. L. Schmidt, Jr.
   124 N. Genois St.
   New Orleans, La.

3. Rev. Jos. Miller, C.S.C.
   139 S. Lopez St.
   New Orleans, La.

4. Rev. Thomas Payton, C.S.C.
   Pastor, Sacred Heart of Jesus Church
   139 S. Lopez St.
   New Orleans, La.

Mr. Jones' answer was: "No, you can subpoena no witnesses at this hearing." Petitioner was never allowed any witnesses since the filing of her complaint on October 2, 1963.[2]

7. Judge Christenberry erred in failing to order Mr. Walter F. Gemeinhardt, First As-

[2] The good must be stated as well as the bad. The said Mr. Jones was helpful to petitioner when she filed her complaint, as much as the law allowed.

sistant U. S. Attorney, to "level" with petitioner on the issues in this cause.

8. The District Court erred in assigning this cause to Judge Christenberry in every instance, as hereinafter shown. The complaint was assigned to Judge Christenberry in 1963; again, when the case went back to the District Court in 1965, it was assigned to Judge Christenberry for hearing;[3] again, when petitioner returned to the District Court on August 2, 1967, for hearing on Motion to to Raise the Issue of Appellant's Competency on the Date of her Refusal to submit to the Examination, it was Judge Christenberry who conducted the hearing. This, despite the fact that when petitioner filed said motion, she asked the Clerk, Miss Boze, that the hearing not be assigned to Judge Christenberry. Miss Boze answered: "It is not what *you* want. I don't know whether Judge Christenberry will accept this case or not." Yet, permission had been granted petitioner by the U.S.C.A. (5th), in its opinion of June 7, 1967. Mr. A. Dallam O'Brien, Jr., Clerk of Court, told petitioner she must go before Judge Christenberry and ask for a hearing on said motion. Upon doing this, she was informed that the Judge would be away for one

[3] The Judge did not make his decision until November 17, 1965; the hearing was held on May 19, 1965. For a Judge who never did other than "Dismiss," in this cause, petitioner thinks this was too long.

week. She asked Mr. O'Brien if the hearing could be assigned to another Judge in the interim. Mr. O'Brien answered: "No, only Judge Christenberry will hear the motion." Petitioner mentions this to show the tight cohesion between the conspirators, Manale and Sonnemann, and the Court; the former having infiltrated the Court with their propaganda. The record before this Court will show this motion is dated July 17, 1967; and the Notice is dated July 25, 1967. Petitioner had to await Judge Christenberry's return on July 24. Judge Christenberry was the "hand-picked" Judge of Manale and Sonnemann. Here was a Judge who had an "interest" in this cause, and who refused to recuse himself. They could not have asked for more.

9. Judge Christenberry erred in concluding, in his opinion of November 17, 1965, p. 4: "* * * that there are no genuine issues of material fact; that the uncontroverted record establishes without question that in separating plaintiff from service* * *." In the first place, the fraud in this cause is obvious, and is a a genuine issue of material fact; as for the "uncontroverted record," this is inadmissible evidence; therefore, it should not have been used in separating petitioner from service.

10. Judge Christenberry erred in failing to give petitioner due process of law which she requested at the hearing on August 2, 1967.

Errors in The United States Court of Appeals For the Fifth Circuit.

1. The Court erred in allowing the constant visits of Col. Robert B. Miller and Col. Sonnemann into the Chambers of the Circuit Judges, every time petitioner filed a motion, brief, supplemental brief, etc. These were violations of petitioner's Constitutional rights, because the purpose of the visits, or "pre-trial" conferences, was to prejudice the Circuit Judges against petitioner and influence their decisions. Petitioner was not present at these conferences, of course, and was not invited. On one occasion when she asked Judge Wisdom's secretary if she might see him, after filing one of her many motions to view the evidence, his secretary replied: "No, the Judge has made his decision, and he is very busy." But the Circuit Judges were never too busy to see Col. Miller and Col. Sonnemann; nor were they too busy to see petitioner's family, who was *forced* by Manale and Sonnemann to go into the Judges' Chambers and lie about petitioner; specifically, Mrs. Audrey Yates Wetta, petitioner's sister, and her niece, Mrs. John T. Payton. Even the clergy was sent into the Judges' Chambers by Manale and Sonnemann.

2. The Court erred in denying petitioner the right to view the evidence, because the

Court's refusal was based on the said uncontroverted record, which is inadmissible.

3. The Court erred in not ordering respondents to answer petitioner's complaint, and in not ordering respondents to file an answering brief. Rule 24, as amended, Subsections 1, 3 and 4 of the U.S.C.A. (5th), provides:

> "3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days *from the service upon him of opponent's brief* * * * twenty copies of a printed brief, * * *." (Italics supplied.)

Respondents' brief was filed May 8, 1964; petitioner's brief was filed June 1, 1964; again, on appeal, respondents' brief was filed on March 30, 1966; petitioner's brief was filed on June 3 1966. See ~~Appendix~~ Exh. "B". The Court erred in not enforcing this Rule. The respondents maneuvered this to avoid answering petitioner's accusations.

4. The Court erred in not ordering Mr. Gemeinhardt to be specific and definite about the issues; in not ordering Mr. Gemeinhardt to declare himself on the "uncontroverted record;" in not ordering him to be specific about the fraud. Evidence of fraud was in the rec-

ord. It is impossible for certain people to submit affidavits in petitioner's favor, and then for the same people to submit affidavits against petitioner's character, without fraud being involved. Mr. Gemeinhardt was always vague and noncommittal, avoiding all the issues, by not mentioning them at all. When he did mention something about "mental" trouble, very briefly, the Court did not order him to give any details at all.

5. The Court erred in not ordering respondents to make charges against petitioner; in affirming the District Court's decision. Judge Christenberry, in his decision of November 17, 1965, quoted the Lloyd-LaFollette Act, as amended 5 U.S.C., § 652; but the District Court and the U.S.C.A. (5th) ignored the fact that petitioner was in the classified civil service of the United States and was removed *without pay*; that no reasons were given her in writing, except the charge of insubordination; that no charges were preferred against her; and that she was not furnished with a copy of such charges. As for "such cause as will promote the efficiency of the service," the cause was the "uncontroverted record," which is inadmissible. Therefore, the "legal conclusions" mentioned in the Court's opinion of June 7, 1967, are illegal because of the inadmissibility of said record. See Mr. E. T. Groark's letter of February 13,

1963, wherein he admits that petitioner was removed on charges. It is Ex. "E" of petitioner's amended complaint dated February 19, 1965. Furthermore, no citizen should be forced to submit to an examination which she knows (or even suspects) will be "rigged" and her refusal to submit to such examination should not be termed "insubordination," for this is tyranny. Petitioner's 31 years of continuous service, and good record, merited being told by her superiors why she was ordered to submit to such examination. If petitioner's good record was "rigged" by Manale and Sonnemann, subsequent to her viewing it, this is not petitioner's fault. She saw a good record throughout the years.

6. The Court erred in failing to order that copy of the motion filed by Mrs. Audrey Yates Wetta for leave to intervene on "behalf" of petitioner, be furnished her. Petitioner filed this suit, and was entitled to a copy. The first she heard of said motion was on July 10, 1967, when she spoke to Mr. Ganucheau, Chief Deputy Clerk; see petitioner's letter of July 10, 1967 to the Clerk of Court. This motion was designed to deprive petitioner of all her rights, permanently, and the said Mrs. Wetta was forced to submit it by Manale and Sonnemann.[4]

[4] This motion was very wisely denied by Circuit Judges Thornberry and Coleman, and District Judge Young, on July 14, 1967.

7. The Court erred in denying petitioner's motion Order to Court Below To Fix for Trial; and Motion To Contend Prejudice, on October 26, 1967, because, by so doing, petitioner was denied due process of law guaranteed by the Constitution; and the right to a hearing by an impartial Judge. The Court also ignored Judge Christenberry's unjudicial utterances in Court on August 2, 1967. See petitioner's letter to the Clerk of Court dated September 15, 1967.

Reasons for Granting the Writ and/or Ruling.

1. Because all of petitioner's Constitutional rights were denied her, including due process of law, as hereinabove set forth.

2. Because inadmissible evidence in the form of the uncontroverted record was used by the District Court in making its decision; and erroneously affirmed by the United States Court of Appeals for the Fifth Circuit.

3. Because confessions were made to the President of the United States, in this cause, including plans for an insurrection to take over this country, subsequent to her discharge. Specifically, confessions have been made by Mr. Manale, Col. Miller and Col. Sonnemann, and others. Mr. Blue told the President the truth in the beginning.

Conclusion.

Wherefore, for the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari and/or Ruling should be granted; but, in any event, petitioner respectfully prays for a Ruling by this Court on her Constitutional rights, with particular emphasis on due process of law.

Respectfully submitted,

JESSIE M. YATES,
128 N. Genois St.
New Orleans, Louisiana 70119,
Acting as own Counsel.

Certificate.

I certify that copy of the foregoing Petition for Writ of Certiorari has been served upon the Hon. Louis C. LaCour, United States Attorney, Eastern District of Louisiana, 500 St. Louis Street, New Orleans, Louisiana, by placing the same in the United States mail.

JESSIE M. YATES.

EXHIBIT A.

524-9970

[redacted]

GIRARD J. FERNANDEZ
ATTORNEY AT LAW
CARONDELET BUILDING
NEW ORLEANS 12, LOUISIANA

REGISTERED

January 16, 1964

28

Miss Jessie M. Yates
128 North Genois Street
New Orleans, Louisiana

Re: Jessie M. Yates v. Bernard J. Manale
U. S. Army Oversea Supply Agency
U. S. Civil Service Commission
Civil Action No. 13901-A, USDC, Ed of La.
File No. 22.875

Dear Miss Yates:

On yesterday, January 15, 1964, you called at my office with your mother and discussed with me the possibility of my representing you in an appeal which you wished to take from a judgment rendered by Hon. Herbert Christenberry, Judge of the U. S. District Court for the Eastern District of Louisiana, in the above matter.

I advised you at that time that I would examine the documents you left with me and would make such investigation as I deemed necessary regarding the facts and the law; and after that, I would make a determination as to whether I wished to take the employment which you have offered me.

After carefully examining the documents you left with me, I had a long conference with Mr. Walter F. Gemeinhardt, Assistant United States Attorney, and also with Mr. John McKay, whom I understand you consulted in this matter within the past thirty days. After careful consideration of your case, I have come to the conclusion that I am unable to be of any service to you in this matter, and I do not wish to represent you on any appeal.

I am returning herewith the documents which you left with me, consisting of a copy of a minute entry issued by the court in this case on December 20, 1963, a letter addressed to you by Mr. Walter F. Gemeinhardt dated December 9, 1963, a copy of a motion to dismiss and the memorandum in support thereof, both prepared by Mr. Gemeinhardt, and a copy of the complaint filed by you in this case. I wish to advise further that it is my understanding that if you wish to take an appeal from Judge Christenberry's decision in this case dismissing your complaint, you have ten days in which to do so from the time of the rendition of the judgment by the court.

Sincerely yours,

Girard J. Fernandez

GJF:rb
Encs.

EXHIBIT B.

29

[redacted]

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS 12, LOUISIANA

May 8, 1964

Miss Jessie M. Yates
128 N. Genois Street
New Orleans, Louisiana

Dear Miss Yates:

Re: JESSIE M. YATES vs.
BERNARD J. MANALE, ET AL
No. 21,296, U.S.C.A., 5th Cir.
Our File Number: 22,875

We are pleased to enclose herewith a copy of the Brief on Behalf of Appellee which we have filed in connection with this matter.

Very truly yours,

For the United States Attorney

WALTER F. GEMEINHARDT
First Assistant U. S. Attorney

WFG:mr

Enclosure

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS, LOUISIANA 70130

March 30, 1966

Miss Jessie M. Yates
128 North Genois Street
New Orleans, Louisiana

In re: Jessie M. Yates v. Bernard J. Manale, et al.,
No. 23,313, Courth of Appeals for the Fifth
Circuit
Our file 22,875

Dear Miss Yates:

Enclosed is copy of the brief of the United States, which has been filed in the captioned appeal.

Very truly yours,

LOUIS C. LA COUR
UNITED STATES ATTORNEY

WALTER F. GERSINHARDT
First Assistant U. S. Attorney

Enclosure
(2)

WFG:asf

EXHIBIT C.

WILLIAM E. LOGAN
ATTORNEY AT LAW
GULFPORT, MISSISSIPPI

June 17, 1963

Miss Jessie M. Yates
128 N. Genois St.
New Orleans 19, Louisiana

Dear Miss Yates,

Transmitted herewith is copy of a letter furnished to me by Congressman Jimmy Morrison, which letter is dated 10 June 1963, and is signed by Colonel Robert W. May, Chief of Staff.

In order to eliminate unnecessary delays, I suggest that any further correspondence by you be addressed either direct to Colonel May or to Congressman Morrison.

With best personal regards to your mothe r,

Sincerely,

William E. Logan

WEL/bp
Enc.

APPENDIX "A".

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23313

JESSIE M. YATES,

Appellant,

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(June 7, 1967.)

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

PER CURIAM: Appellant was a stenographic traffic clerk with the United States Army Oversea Supply Agency. On November 15, 1962, she was advised in writing by her superior that to determine her fitness for duty arrangements had been made for her to take a medical examination at no cost to her. The next day appellant refused in writing to submit to the examination. She was duly advised by the agency that her refusal could be

viewed as an act of insubordination. Nevertheless, she persisted in her refusal and was discharged for insubordination. That decision was affirmed by the Civil Service Commission and the Board of Appeals and Review. Judicial relief was sought by the appellant in the District Court which granted the appellees' motion for a summary judgment. We affirm.

Appellant sought both in the administrative actions and in the judicial proceedings to challenge the necessity of her taking a medical examination. But that was not the issue upon which she was discharged; her insubordination stemmed from her refusal to submit to the examination and not from the reasons the agency may have had for seeking such an examination.

The court below correctly concluded there were no genuine issues of material facts and that the uncontroverted record established that in discharging appellant her superiors had substantially complied with the applicable statutes and regulations.

The appellant is without standing to contend bias by the District Court since she failed to file a timely affidavit pursuant to 28 U.S.C. §144. Furthermore, the decision below rested solely on legal conclusions which have been fully reviewed by this Court and found correct.

This affirmance is without prejudice to appellant raising, if she chooses, in the court below the issue of her competency on the date of her refusal to submit to the examination.

YOUNG, District Judge, concurring.

On the basis of what was presented to the court below the issues were correctly decided, but I think justice in the case would not result unless the case is returned to the United States Army Oversea Supply Agency for a determination by it from the record if the appellant was responsible for her action in refusing to submit to the examination.

In my opinion, from an examination of the record, serious doubt is cast on this issue and if, in fact, she was not responsible then it would be as much an injustice to deprive her of her pension and other rights earned by her during years of satisfactory and creditable service as it would be to punish a defendant for a crime committed under circumstances that would make him legally not responsible for such an offense.

I do not believe that just returning the case to the court below and leaving the initiative to the appellant on this issue is sufficient because again the record leads to the conclusion that such initiative might not be taken.

APPENDIX "B".

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

October Term, 1966.

No. 23313.

D. C. Docket No. CA 13901.

JESSIE M. YATES,

Appellant,

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL.,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before THORNBERRY and COLEMAN, Circuit Judges, and YOUNG, District Judge.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the Judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Jessie M. Yates, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

YOUNG, District Judge, specially concurs.

June 7, 1967

Issued as Mandate: Jul. 14, 1967

APPENDIX "C".

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21296

JESSIE M. YATES,
Appellant,

versus

BERNARD J. MANALE, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 12, 1965.)

Before JONES and BROWN, Circuit Judges, and SHEEHY, District Judge.

PER CURIAM: The appellant brought an action in the district court seeking a judgment restoring her to the civil service position from which, according to her claim, she had been wrongfully removed. In her complaint the appellant named as defendants (1) Bernard J. Manale, Assistant Chief of the Movements Division of the United States Army Oversea Supply Agency in New Orleans, Louisiana, (2) U.S. Army Oversea Supply Agency and (3) the U. S. Civil Service Commission. The district court granted a motion to dismiss on the ground that the

individual Commissioners of the United States Civil Service Commission were indispensable parties and were not joined. From the judgment of dismissal against the appellant she has taken this appeal.

The Commissioners are indispensable parties and the judgment will be affirmed. However, if the appellant shall, promptly upon the coming down of the mandate herein, apply to the district court for leave to amend her complaint by joining as parties defendant the several Commissioners of the United States Civil Service Commission, the district court is directed, in the interest of justice, to grant such leave and allow such amendment.

AFFIRMED WITH DIRECTIONS.

APPENDIX "D".

MINUTE ENTRY:
AUGUST 2, 1967
CHRISTENBERRY, J.

SECTION "A"

No. 13901

CIVIL ACTION

JESSIE M. YATES

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION, ET AL

This cause came on this day for hearing on motion to raise issue of appellant's competency on date of refusal to submit to medical examination.

PRESENT: Jessie M. Yates
In Proper Person

Frederick Veters, Esq.
Assistant U. S. Attorney

In view of plaintiff's statement that she was competent at the time of refusal to take the medical examination and that she does not want to produce any evidence that she was not competent at that time, the motion is now MOOT.

Aug. 9, 1967.

APPENDIX "E".

Filed Nov. 18, 1965.

A. Dallam O'Brien, Jr., Clerk.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 13901

CIVIL ACTION

JESSIE M. YATES

vs.

BERNARD J. MANALE, ET AL

CHRISTENBERRY, J.

This is an action brought by Jessie M. Yates against Bernard J. Manale, U.S. Army Overseas Supply Agency, U.S. Civil Service Commission, and others, in which she seeks reinstatement as a government employee. The plaintiff was employed by U.S. Army Overseas Supply Agency. She was removed from her position by the Agency on December 22, 1962, on a charge of insubordination which consisted of her refusal to submit to a medical examination. She appealed her separation to the United States Civil Service Commission. After a hearing the action of the Agency was upheld. She then appealed to the Board of Appeals and Review of the Civil Service

Commission, which affirmed the decision of the Commission. The plaintiff then filed this suit.

She alleges that she has been aggrieved by wrongful administrative acts of the Agency, stating:

> "her discharge from her position *** on a charge of Insubordination (was) without the benefit of plaintiff seeing and challenging the charges against her ***."

Plaintiff avers the only charge ever given to her in writing, or otherwise, was the charge of insubordination for refusing to submit to a medical examination to determine "fitness for duty" and that Colonel Miller (her supervisor) did not advise plaintiff why a medical examination was necessary, or why plaintiff was not "fit for duty".

Now before the Court is a motion of the defendants for Summary Judgment in their favor or in the alternative to dismiss the action, and to strike the amended complaint, founded upon the assertion that the plaintiff was extended all the rights to which she was entitled.

The removal and discipline of government employees are almost entirely matters of executive agency discretion, and judicial review of such actions is ordinarily available only to determine if there has been substantial compliance with the pertinent statutory procedures provided by Congress, and no misconstruction of governing legislation. *Eustace v. Day*, 114 U.S. App. D.C. 242, 314

F. 2d 247 (1962); *Hargett v. Summerfield,* 100 U.S. App. D.C. 85, 243 F. 2d 29, 32 (1957), and cases cited therein. It is not the function of the court to review the wisdom or good judgment of the governmental department head in exercising his discretion in matters of employee removal and discipline. *Chiriaco v. United States,* 339 F. 2d 589 (5th Cir., 1964); *Hargett v. Summerfield, supra.*

This rule of limited judicial review clearly means that the jurisdiction of this Court is limited to ascertaining whether the defendants substantially complied with the applicable procedures and statutes.

The Lloyd-Lafollette Act, as amended, 5 U.S.C. §652, provides that:

> "(a) No person in the classified civil service of the United States shall be removed or suspended without pay except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing is required except in the discretion of the officer or employee directing the removal or suspension without pay."

The basis of the plaintiff's complaint is that she was entitled to see the evidence upon which the request for a medical examination was required, that this was not shown her and that therefore the defendants did not comply with the applicable procedure.

Executive Order No. 4071 of September 4, 1924, states:

> "An agency may secure medical examinations to determine the fitness for duty of its employees in the competitive service provided (1) No expense to the Commission is incurred without its specific approval. (2) The examination is made without cost to the employee."

The record clearly shows that Colonel Miller on November 15, 1962, advised Miss Yates in writing that she was to take a medical examination on November 23, 1962, without expense to herself, and refusal to take this examination would be construed as an act of insubordination. On November 16, 1962, she refused in writing to take the examination, whereupon the consequences of her refusal were explained to her by her superiors. On December 22, 1962, after advance notice, Miss Yates was permanently removed from her position for insubordination, namely her failure to take the medical examination. This Court is unable to find any applicable statute or regulation which would require the Agency to tell Miss Yates why it was insisting that she have a medical examination. It is the opinion of this Court that neither the Lloyd-LaFollette Act nor the Civil Service Commission's regulations give the plaintiff this asserted right.

The Court finds that all the proceedings were entirely regular, the pertinent provisions of applicable laws were complied with, and all of the issues raised by this suit were heard and determined by the administrative agency charged with this responsibility.

As to plaintiff's contentions concerning the fact that she received satisfactory efficiency ratings prior to her dismissal, granting this, it is clear that an employee may still be subject to dismissal in the interest of promoting the efficiency of the service. *Thomas v. Ward*, 96 U.S. App. D.C. 302, 225 F. 2d 953 (1955); *DeFino v. McNamara*, 109 U.S. App. D.C. 300, 287 F.2d 339 (1961).

The Court concludes that there are no genuine issues of material fact; that the uncontroverted record establishes without question that in separating plaintiff from service her superiors substantially complied with the applicable statutes and regulations.

The motion of the defendants for summary judgment is GRANTED, and plaintiff's suit is DISMISSED.

New Orleans, Louisiana, November 17, 1965.

HERBERT CHRISTENBERRY,
United States District Judge.

APPENDIX "F".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

DIVISION "A"

No. 13901

CIVIL ACTION

JESSIE M. YATES

versus

BERNARD J. MANALE, U. S. ARMY OVERSEA SUPPLY AGENCY, U. S. CIVIL SERVICE COMMISSION.

JUDGMENT.

The Court having, on November 17, 1965, granted the motion of defendants for summary judgment, and having dismissed the plaintiff's suit;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Bernard J. Manale, U. S. Army Oversea Supply Agency, U. S. Civil Service Commission, and against plaintiff, Jessie M. Yates, dismissing plaintiff's suit with costs.

Dated at New Orleans, Louisiana on this 22nd day of November 1965.

A. DALLAM O'BRIEN, JR.,
(A. Dallam O'Brien, Jr.),
Clerk.

Jessie M. Yates, In Proper Person

Nov. 23, 1965

Walter F. Gemeinhardt, Esq.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 957

JESSIE M. YATES, PETITIONER

v.

BERNARD J. MANALE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

1. Petitioner seeks review of a judgment of the court of appeals entered on June 7, 1967, and issued as a mandate on July 14, 1967 (Pet. 1, Pet. App. B. 36–37). No extension of time within which to file a petition for a writ of certiorari was obtained, and the petition, filed on December 26, 1967, is thus out of time under the jurisdictional provisions of 28 U.S.C. 2101(c).

2. Although we do not view the petition as applying for review of a subsequent judgment of the court below, entered on October 26, 1967, we believe it is appropriate to call the Court's attention to this judgment, and the reasons why, even if the Court were to

288-540—68

treat the petition as timely, there would be no occasion for further review.

Petitioner was a stenographic traffic clerk with the Army Overseas Supply Agency. In November, 1962, she was requested by her superior to take a medical examination to determine her fitness for duty. See Executive Order No. 4071, 5 C.F.R. 29.6 (1961 ed.). Despite the advice that refusal to take the fitness examination could be viewed as insubordination, she persisted in her refusal and was accordingly dismissed. After the Civil Service Commission and the Board of Appeals upheld the dismissal, petitioner brought suit in the district court, seeking reinstatement. After the proper parties defendant had been named in an amended complaint (see Pet. App. C. 38–39), the district court determined that the discharge had been proper (Pet. App. E. 41–45), and the court of appeals on June 7, 1967, affirmed, "without prejudice to * * * [petitioner's] raising, if she chooses, in the court below the issue of her competency on the date of her refusal to submit to the examination" (Pet. App. A. 34).[1] (The petition asks review of that judgment only.)

Subsequently, pursuant to the suggestion by the court below, petitioner filed a motion in the district court "to raise issue of appellant's competency on date of refusal to submit to medical examination" (Pet. App. D. 40). But in this proceeding petitioner contended that she *was* competent; since this assertion

[1] Petitioner's pension rights, etc., apparently might have been preserved if she was found to have been incompetent at the time of her discharge.

was not contested, the district judge declared the motion moot, and a minute entry was made to that effect on August 2, 1967 (*ibid.*). An appeal was taken from that entry, but was dismissed by the court of appeals on October 26, 1967. Although petitioner mentions this action (Pet. 26), she does not ask to have it reviewed (see Pet. 1; see, also, Rule 23(1)(b)(i) of the Rules of this Court), any more than she seeks review of other miscellaneous matters (see Pet. 17–25).

In any event, since in the district court petitioner herself affirmatively asserted her competency, the court of appeals correctly dismissed the appeal from the August 2, 1967, minute entry.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.

U.S. GOVERNMENT PRINTING OFFICE: 1968